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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/758,480

Filing Date: January 11, 2001

Appellant(s): FORLER ET AL.

Joel M. Fogelson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/3/06 appealing from the Office action
mailed 3/11/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 - 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lajoie et al (6,049,333) in view of Bixler (6,507,351).

Considering claims 1 and 9, Lajoie discloses a method and apparatus for providing and receiving video content information data from telecasting facility 20 (see fig 2) from any of known broadcasters (see col 5 lines 53 - 58), the video being stored in data storage unit 30 for display on a users TV 58 (see fig 3). Note: broadcasters and data retrieved and transmitted from data storage unit meets the claimed 'first source'. Lajoie further discloses selecting the type of information to be received, in particular, Lajoie discloses selecting from football highlights 76, football game day 72 and football films 78 (see fig 5), noting that the selected information is from data storage 24 which

meets the claimed "second source". Lajoie further discloses receiving the selected information and displaying the selected information during display of the program (col 7 lines 57 - 65, col 8 lines 19 - 20, and col 10 lines 30 - 62).

Lajoie fails to disclose wherein the display of the selected information is controlled by a user selected frequency of display parameter that determines when the selected information is displayed. In analogous art, Bixler discloses a computer system which is coupled to a remote server and teaches automatically acquiring and displaying information obtained from remote sources (see col 2 lines 39 – 45). Bixler further teaches a user can display the acquired information according to a user defined schedule and frequency (see col 7 lines 31 – 55, fig 14, col 2 lines 10 – 29, col 3 lines 1 – 11). It would have been obvious to modify Lajoie to include the claimed displaying the selected information according to a user selected frequency of display to provide a user with more control by enabling a user to set a schedule as to when the user would like to view the selected information. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lajoie to include the claimed limitation to provide a user with added interactive control by enabling a user to set a schedule and frequency of display according to user preferences.

Regarding claims 2 and 11, Lajoie discloses selecting a type of information to be received from a information on a variety of topics (see fig 5, fig 9, col 8 lines 49 - 61).

Regarding claims 3 and 10, Lajoie discloses automatically displaying the selected information irrespective of the content of the video (col 7 lines 57 - 65), noting that automatically displaying when tune to a designated channel is irrespective of the content on that channel.

Considering claims 4, 12 and 13, the combination of Lajoie and Bixler discloses the claimed limitations wherein Lajoie discloses a user can select display of additional information and discloses the user can toggle the banner on or off by pressing exit key (col 13 lines 52 - 55) or by pressing the select key (col 14 lines 49 - 55), thus a user can select the schedule for automatically displaying which includes continuous display. Bixler discloses the claimed determining the frequency of display as discussed above. It is noted that the a cycle or frequency for display is a function of time thus the cycle or frequency is a schedule which represents a user selectable interval of time that determines a time interval between when the selected information is displayed.

Regarding claims 5 and 6, Lajoie discloses a user can turn off or on the selected type of received information and discloses the selected type of information is continuously displayed, periodically displayed and displayed during status change (col 8 lines 8 - 19, col 11 lines 14 - 58, col 14 lines 24 - 37). Bixler teaches a system which includes a user defined frequency display parameter which enables selected information to be displayed at varying frequencies or intervals (see col 7 lines 31 – 55, fig 14, col 2 lines 10 – 29, col 3 lines 1 – 11). The combination of Lajoie and Bixler fails to disclose the claimed means for selecting between display schedule options of (i) continuous display of the selected type of the received information, (ii) periodic display of the selected type of information and (iii) as a status change event (including a new event) occurs display of the selected type of received information. It would have been obvious to provide a user with a means for selecting between schedule options to provide a user with a choice of how long or when the user chooses to view the selected information thereby also enhancing a user's interactive experience. Therefore, it would

have been obvious to modify the combination of Lajoie and Bixler to include for selecting between schedule options to provide a user with a choice of how long or when the user chooses to view the selected information thereby also enhancing a user's interactive experience.

Considering claims 7 and 15, Lajoie discloses an on screen menu operable to permit user selection (see fig 5 and fig 9).

Regarding claims 8 and 16, Lajoie discloses the claimed displaying the selected type of information within an image displayed on the display device auxiliary to the display of the video from the first source on the display device (fig 6, fig 7 and fig 9).

Regarding claim 14, Lajoie fails to disclose the claimed means for selecting at least one of as an event changes. It would have been obvious to modify Lajoie to include providing a user with option of selecting displaying of the received information as an event changes to provide a user with the option of receiving new updated event changing information and to enhance a user's interactive experience.

Claim 17 - 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lajoie in view of Kabushika Kaisha Toshiba (EP 0 766 463 A2) and Bixler (6,507,351).

Considering claim 17, Lajoie discloses a CPU (36), a first tuner 38 (fig 2) in communication with CPU (36) for receiving program from telecasting facility 20 (see fig 2) from any of known broadcasters (see col 5 lines 53 - 58), the video being stored in data storage unit 30 for display on a users TV 58 (see fig 3). Note: broadcasters and

data retrieved and transmitted from data storage unit meets the claimed "first source". Lajoie further discloses the received interactive data is, received from data storage 24 (fig 1 , col 5 lines 20 - 35, col 6 lines 15 - 25) which meets the claimed "second source". The interactive or selected data is then forwarded to modem 40 which demodulates the information (col 7 lines 1 - 10), noting that modem 40 meets the claimed "auxiliary information parser" limitation and noting that modem 40 is communication with CPU 36. Lajoie further discloses receiving the selected information and displaying the selected information during display of the program (col 7 lines 57 - 65, col 8 lines 19 - 20, and col 10 lines 30 - 62).

Lajoie fails to disclose the claimed second tuner and auxiliary information parser in communication with second tuner. Kabushiki teaches a TV receiver with two tuners for displaying text and/or graphics on a television picture. It would have been obvious to one skilled in the art providing two tuner would have provided faster tuning and retrieval of data in lieu of using one tuner. Therefore, it would have been obvious to one having ordinary skill in the ad at the time the invention was made to modify Lajoie to include the claimed two tuners to provide faster tuning and retrieval of data.

Lajoie fails to disclose wherein the display of the selected information is controlled by a frequency of display parameter that determines when the selected information is displayed. Bixler teaches a system which includes a user defined frequency display parameter which enables selected information to be displayed at varying frequencies or intervals (see col 7 lines 31 – 55, fig 14, col 2 lines 10 – 29, col 3 lines 1 – 11). It would have been obvious to modify Lajoie to include the claimed displaying the selected information

according to a user selected frequency of display to provide a user with more control by enabling a user to set a schedule as to when the user would like to view the selected information. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lajoie to include the claimed limitation to provide a user with added interactive control by enabling a user to set a schedule and frequency of display according to user preferences.

Considering claims 18, Lajoie discloses a graphics processor 44 operable to permit user selection (see col 6 lines 26 - 54 and col 8 lines 20 - 38, see fig 5 and fig 9).

Considering claim 19, the combination of Lajoie and Bixler discloses the claimed limitations, wherein Bixler teaches a user variable frequency of display parameter as a modifiable time interval that determines a length of time in between when said auxiliary information is displayed (see col 7 lines 31 – 55, fig 14, col 2 lines 10 – 29, col 3 lines 1 – 11). It is noted that the cycle or frequency for display is a function of time thus the cycle or frequency is a schedule which represents a user selectable interval of time that determines a time interval between when the selected information is displayed.

Regarding claim 20, Lajoie discloses the claimed displaying the selected type of information within an image displayed on the display device auxiliary to the display of the video from the first source on the display device fig 6, fig 7 and fig 9).

(10) Response to Argument

In re page 5, claims 1-3 and 5-8, Appellant argues, the Final Rejection does not make out a prima facie case of obviousness. In particular, Appellant argues Bixler fails completely to disclose or suggest the feature of claim 1 of "providing the selected information for display while the video information is being displayed" (claim 1). This feature is absent from Lajoie as well.

In response, the Examiner would like to point to figures 7 and 10 of Lajoie which clearly depict providing simultaneous display of selected information, in this case, scores, with the full motion video of the event. Lajoie further discloses, "The viewer can use the remote control unit 48 to cause the set-top terminal 32 to display information from the event database of the present invention on the television 58. The event data base may be selected by the viewer from a menu of interactive applications. Alternatively, the information from the event database may be automatically displayed under certain circumstances, such as when the viewer tunes to a designated channel". It is clear that Lajoie teaches the feature of claim 1 of "*providing the selected information for display while the video information is being displayed.*"

In re page 6, claims 1-3 and 5-8, Appellant argues, In addition, the Examiner has failed to indicate anything in either of the references which would lead one to combine them in any manner, and certainly not to arrive at the presently claimed invention. Appellant further argues, "According to the teachings and disclosure set forth in Bixler, the ordinary skilled artisan would not be motivated to modify the teachings of the Lajoie patent". Appellant still further argues "the disclosure of the Lajoie or Bixler patents

acknowledges that there is any problem present in their systems which could be solved by any such combination".

Bixler teaches "The present invention addresses these and other problems inherent to personal information management by providing a system and method for routinely an automatically acquiring and displaying information from multiple selected digital information sources in a manner that enhances the efficiency and ability of computer-user to effectively view, utilize, study and remember the selected information." Bixler still further discloses "For example, once the appropriate set-up selection information has been entered, Internet web-site content and updates, such as confirmation of on-line travel reservations, results of bids submitted on Internet auction sites, etc. can be automatically acquired on a routine basis and repetitively displayed without further action by the user". Bixler teaches various types of updateable information can be automatically acquired and displayed. Bixler further teaches the display characteristics including frequency and duration of the display of information can be specified by the user (see col. 7 lines 44 – 47, fig. 10, fig. 11). As a result, at the time of the invention, an artisan having routine skill would have been motivated to combine Lajoie with Bixler.

In re page 7, claim 4, Appellant argues claim 4 recites a "a schedule for determining the frequency of display for automatically displaying the selected information". This scheduling of the frequency of display is not the same as (or obvious in view of) the toggling of this event database banner as disclosed in Lajoie.

In response, Bixler clearly teaches providing a user with a schedule for displaying selected information (see fig. 10 and fig. 11). The information, which includes updates (see col. 3 lines 58 – 67) is displayed to a user at a user defined schedule (see fig. 10 and fig. 11). Lajoie teaches simultaneously displaying a video event with sports updates (see fig. 7). It would have been obvious to modify Lajoie to include displaying sports updates according to a user defined schedule.

In re page 8, claim 9, Appellant argues Bixler completely fails to teach anything about displaying the selected information during display of the program as required by claim 9. It is submitted that there is nothing in either Lajoie or Bixler, alone or in combination, would lead anyone to combine any teachings of those two references. It is submitted that the Examiner's suggested incomplete combination has only been arrived at as a result of Appellant's teachings and inappropriate use of hindsight.

As discussed above, Lajoie clearly discloses displaying selected information during display of the program and the disclosure in Bixler would lead someone to combine the teachings of the two references.

In re page 9, Appellant argues "According to the teachings and disclosure set forth in Bixler, the ordinary skilled artisan would be motivated to modify the teachings of the Lajoie patent." Appellant further argues "Neither of the disclosures of the Lajoie or Bixler patents acknowledges that there is any problem present in their systems which could be solved by an such combination.

In response, it is noted that this argument has been addressed above and is not being reiterated again.

In re page 10, Appellant argues, Unlike the invention of claims 17-20, which requires "said processing unit is operable to display the program on the display and concurrently display the selected type of auxiliary information on the display irrespective of the content of the program (claim 17, emphasis added). Bixler's acquired information is provided when his apparatus is operating in the screen saver mode (Bixler, col. 7 lines 32) and, therefore that is the only information then displayed which is not concurrent with the display of a program".

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is noted that the combination of Lajoie and Bixler teaches the claimed limitation, wherein Lajoie teaches concurrent display of selected auxiliary information with content of the program. It is noted that Lajoie discloses "...*the information displayed in the event data base banner 94 may not pertain to the television program displayed in the video content region 92. Instead, the information in the banner 94 may relate to other televised events, or even untelevised events*".

In re page 10, Appellant argues, "It is acknowledged that the Toshiba reference discloses two tuners but no link has been shown by the Examiner between that reference and either of the other two cited references for making out a prima facie case of obviousness".

Lajoie discloses displaying two types of information, video content and supplemental content, from two sources. Kabushiki discloses a two tuner system for receiving two forms of data. The previous rejection stated "Lajoie fails to disclose the claimed second tuner and auxiliary information parser in communication with second tuner. Kabushiki teaches a TV receiver with two tuners for displaying text and/or graphics on a television picture. It would have been obvious to one skilled in the art providing two tuner would have provided faster tuning and retrieval of data in lieu of using one tuner. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lajoie to include the claimed two tuners to provide faster tuning and retrieval of data." A prima facie case of obviousness has been shown.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Vivek Srivastava



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